

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 BAYVIEW LOAN SERVICING, LLC,

8 Plaintiff,

9 v.

10 STERLING AT SILVER SPRINGS
11 HOMEOWNERS ASSOCIATION, *et al*,

12 Defendants.

Case No. 2:16-cv-2117-KJD-NJK

ORDER

13 **I. Background and Analysis**

14 This case emerges from the non-judicial foreclosure sale by Defendant Silver Springs
15 Homeowners Association (“Silver Springs”) on or about September 13, 2013 of the property
16 located at 5175 Midnight Oil Drive, Las Vegas, Nevada 89122 (“the Property”). This case shares
17 a similar fact pattern with many cases currently pending before this Court, all having to do with
18 HOA foreclosure sales. One of the issues before the Court centers in whole or in part around the
19 question of what notice of default the foreclosing party was required to provide Plaintiff prior to
20 its foreclosure sale on the Property. After the Nevada Supreme Court’s decision in SFR Invs.
21 Pool 1, LLC v. U.S. Bank, the Ninth Circuit decided Bourne Valley Court Trust v. Wells Fargo
22 Bank, NA, 832 F.3d 1154, 1160 (9th Cir. 2016) (holding NRS 115.3116(2)’s statutory notice
23 scheme was facially unconstitutional).

24 On April 21, 2017, in Bank of New York Mellon v. Star Hills Homeowners Ass’n, this
25 Court certified the following question to the Nevada Supreme Court: “Whether NRS §
26 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners associations to provide
27 notices of default to banks even when a bank does not request notice?” Bank of New York
28 Mellon v. Star Hill Homeowners Ass’n, 2017 WL 1439671, at *5 (D. Nev. April 21, 2017).

1 In granting certification, the Court reasoned the following: In Bourne Valley, the Ninth
2 Circuit definitively answered the question that the statute’s “opt-in” framework was
3 unconstitutional. Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d 1154, 1160 (9th
4 Cir. 2016). However, that left the Court with the unresolved question of what notice must be
5 provided. “It is solely within the province of the state courts to authoritatively construe state
6 legislation.” Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001). As
7 such, state law questions of first impression like this one should be resolved by the state’s
8 highest court. See Huddleston v. Dwyer, 322 U.S. 232, 237 (1944).

9 On August 2, 2018, the Supreme Court of Nevada answered the certified question. See
10 SFR Invs. Pool 1, LLC v. Bank of New York Mellon, 422 P.3d 1248 (Nev. 2018). Further, it has
11 since issued two new opinions that bear on the issues in this action. See Wells Fargo Bank, N.A.
12 v. Tim Radecki, 2018 WL 4402403 (Nev. September 13, 2018); Bank of America, N.A. v. SFR
13 Invs. Pool 1, LLC, 2018 WL 4403296 (Nev. September 13, 2018) (tender of the superpriority
14 amount prior to foreclosure results in buyer taking property subject to deed of trust).

15 **A. Stay of the Case**

16 A district court has the inherent power to stay cases to control its docket and promote the
17 efficient use of judicial resources. Landis v. North Am. Co., 299 U.S., 248, 254-55 (1936);
18 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 200). A
19 stay is no longer necessary in this action where the certified question has already been decided.

20 **B. Briefing Schedule**

21 The parties may either file a stipulation or move the Court for a modified discovery plan
22 and scheduling order as necessary. If the parties fail to do so, dispositive motions are due no later
23 than thirty (30) days after the entry of this order. Any future dispositive motions must address the
24 most recent case law applicable to the issues in this action.

25 ///

26 ///

27 ///

28 ///

1 **II. Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that the stay in this action is lifted;

3 IT IS FURTHER ORDERED that stipulations, motions to modify the discovery plan and
4 scheduling order, or in the absence of such stipulations or motions, dispositive motions are due
5 within thirty (30) days after the entry of this order.

6 Dated this 18th day of July, 2019.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



The Honorable Kent J. Dawson
United States District Judge